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Case No.
20-CV-0423-JFH

JANUARY 12, 2021

UNITED STATES DISTRICT COURT

A P P E A R A N C E S

ON BEHALF OF THE GOVERNMENT

APPEARING VIA ZOOM
Jonathan Brightbill, Esq.
Winston & Strawn, LLP
1901 L Street NW
Washington, DC 20036

APPEARING VIA ZOOM
Mary Hollingsworth,
United States Attorney's Office
999 18th Street S. Terrace, Suite 370
Denver, Colorado 80202

APPEARING VIA ZOOM
Briena Strippoli, Esq.
United States Department of Justice - Environment
and Natural Resources Division
950 Pennsylvania Ave. NW, Suite 2133
Washington, DC 20530

APPEARING VIA ZOOM
Michael J. O'Malley, Esq.
United States Attorney's Office
520 Denison Ave.
Muskogee, Oklahoma 74401

ON BEHALF OF THE DEFENDANT

APPEARING VIA ZOOM
Daniel J. Card, Esq.
Attorney at Law
512 NW 12th Street
Oklahoma City, Oklahoma 73103

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COURT IN SESSION

(On the record at 10:01 a.m.)

THE COURT: Call Case 20-CIV-423-JFH,
*United States of America v Jeffrey Lowe, Lauren
Lowe, Greater Wynnewood Exotic Animal Park, LLC,
and Tiger King, LLC.*

If counsel would please make your appearances
for the record.

MR. BRIGHTBILL: Jonathan Brightbill for
the United States of America.

I also have Mary Hollingsworth and Briena
Strippoli from the Environment and Natural
Resources Division, and then Susan Brandon
and . . .

MR. O'MALLEY: Michael O'Malley.

MR. BRIGHTBILL: Michael O'Malley from
the Eastern District of Oklahoma U.S. Attorney's
office, Your Honor.

Just a point of personal privilege here, Your
Honor, we are having a very difficult time
hearing at least the courtroom deputy. I don't
know when Your Honor speaks if we're going to be
able to hear that.

THE COURT: Okay. Let's see. Can you
hear me okay?

1 MR. BRIGHTBILL: No, not at all.

2 THE COURT: So they can't hear me.

3 Let's see. How about now?

4 MR. CARD: Your Honor, this is Daniel
5 Card on behalf Jeffrey Lowe and Lauren Lowe, the
6 defendants. I can't hear you all that well
7 either, Your Honor.

8 THE COURT: Okay. Let's see what we can
9 do here. Okay. Let's see if this works any
10 better now.

11 COURTROOM DEPUTY: Try that again,
12 Judge.

13 THE COURT: Okay. Let's see this if
14 this works any better now. Is that better?

15 MR. BRIGHTBILL: Unfortunately no, Your
16 Honor.

17 (Pause in proceedings.)

18 THE COURT: Does this help at all?

19 MR. BRIGHTBILL: A little bit, Your
20 Honor, yes. I mean, another possible solution is
21 to mute the microphone on the one far away with
22 the camera with the panoramic shot and if there
23 is a phone at your Honor's bench, to dial in to
24 do the audio so that you are right up next to the
25 microphone. That's another thing that sometimes

1 works.

2 THE COURT: Is that an option, Nick?

3 NICK NEIBLING: Are you able to hear us?

4 MR. BRIGHTBILL: Your Honor, that's much
5 better.

6 MR. CARD: That's much better.

7 THE COURT: Well, unfortunately that was
8 our IT person that you were hearing, so I could
9 just leave and let him take over. Probably
10 wouldn't work very well, would it?

11 How are you dialed in, Nick? Are you just on
12 your computer?

13 NICK NEIBLING: My computer, yes.

14 THE COURT: Well, what if we brought the
15 computer up here with the microphone? Would that
16 work?

17 COURTROOM DEPUTY: It sounds like you're
18 not even going over the courtroom.

19 THE COURT: It sounds like it is. Can
20 you hear me in the back?

21 Yeah, they can hear.

22 So we need a different microphone.

23 Okay. Is it coming through that speaker now?

24 Can counsel on the line hear me better now?

25 MR. BRIGHTBILL: Candidly, no, Your

1 Honor. There was a moment just a little bit ago
2 where you were very intelligible but now you're
3 harder to hear now.

4 THE COURT: Okay. Let's try this again.
5 We're speaking pretty loud in the microphone, but
6 is there away to get that speaker up closer to
7 the other one, Nick?

8 It sounds like the audio has not improved
9 from moving the device in the camera.

10 Counsel, can you hear me better now?

11 It doesn't sound like it.

12 MR. BRIGHTBILL: Unfortunately no, Your
13 Honor. Is the different microphone still on?

14 (Pause in proceedings.)

15 THE COURT: Sorry, counsel. We're
16 diagnosing the problem. We'll see if we can get
17 it remedied and start as soon as we can.

18 MR. BRIGHTBILL: Your Honor, it sounds
19 like the microphone is still across the
20 courtroom. The audio has not improved from
21 moving the device that the camera --

22 THE COURT: Yeah, I think it's a problem
23 with the camera device. It's not picking us up,
24 so we'll see if we can exchange it for another
25 one.

1 MR. BRIGHTBILL: Right there is better,
2 Your Honor, whatever just happened.

3 NICK NEIBLING: I changed the settings.

4 THE COURT: Oh, changed the setting.
5 Can you all hear me better now?

6 MR. BRIGHTBILL: Yes. Yes. We can,
7 Your Honor.

8 THE COURT: Okay. That's good. Okay.
9 All right. Any time that you all can't hear
10 me, just speak up and I'll try to remedy it.
11 I'll try to speak as loud as I can. Is this
12 better right now?

13 MR. BRIGHTBILL: Yes, it is.

14 MR. CARD: Yes, Your Honor.

15 THE COURT: Okay. Very good. We got
16 introductions for counsel for the plaintiff.

17 Good morning to you all; and then counsel for
18 defendant if you would make your appearance.

19 MR. CARD: Yes, sir. This is Daniel
20 Card on behalf of the defendants; Jeff and Lauren
21 Lowe are also joining just to observe.

22 THE COURT: Okay. Good morning,
23 Counsel.

24 All right. We're here on the Plaintiff's
25 Motion for Preliminary Injunction and Motion for

1 Temporary Restraining Order, and I appreciate the
2 parties conferring.

3 It sounds like, from what I've seen over the
4 last couple of days, the parties have done a
5 better job of conferring. Looking at your
6 responses that you filed, and I looked at those
7 this morning, Mr. Card, there is a couple of
8 things that I note. There's a couple of
9 statements in response to the Motion for
10 Preliminary Injunction that defendants would have
11 agreed to certain things had they been consulted
12 with initially, and then there are some, some
13 counter -- what seems to be counter-proposals to
14 the relief that the government seeks by way of a
15 temporary restraining order.

16 Have those matters been discussed with the
17 government over the last few days as far as any
18 issues that the defendants would agree to?

19 MR. CARD: Your Honor, the email I did
20 offer for the government if or, excuse me,
21 Mr. Lowe offered that the government could have a
22 vet of their choosing come to his facility on his
23 dime and look at every cub in the facility, take
24 an x-ray if they see fit, and look at the mothers
25 who are nursing cubs in order to assess whether

1 they are in any danger of metabolic bone disease,
2 or anything else for that matter. I never got a
3 response to that offer.

4 THE COURT: All right. Let me hear from
5 Mr. Brightbill on that because this is the first
6 time that I've obviously had a chance to see that
7 or be a part of any of these communications.

8 Mr. Brightbill, did you see that proposal in
9 defendants' response to the Motion for Temporary
10 Restraining Order and, if so, what is your
11 response to that?

12 MR. BRIGHTBILL: Yes, we did, Your
13 Honor. And our response is that it does not
14 appear sufficient. We have consulted with USDA
15 and the experts there, and as to whether there
16 might be some eventual workable solution but the
17 problem is, Your Honor, that we're not dealing
18 with a moment in time, just a mere snapshot.

19 There is a continuing course of conduct of
20 insufficient handling of these animals. So
21 having a veterinarian come in and take x-rays
22 under certain conditions for a snapshot in time
23 is not sufficient, Your Honor.

24 This is an individual with a history, as we
25 will discuss, doing what they need to do to get

1 past legal trouble at the moment, if they can;
2 hasn't always kept them out legal trouble, Your
3 Honor. And the solution that's been offered is,
4 frankly, is insufficient as we now understand it
5 from our clients at USDA.

6 THE COURT: Very good, okay. That's
7 enough of that. We've explored our options and,
8 of course, I can't make you all come to some
9 agreement and that's why I'm here to resolve the
10 dispute.

11 So if there's nothing else on an
12 administrative basis, let's proceed with the
13 plaintiffs.

14 MR. BRIGHTBILL: Thank you, Your Honor.
15 Jonathan Brightbill for the United States.

16 First of all, I want to thank you, Your
17 Honor, on behalf of the United States and the
18 USDA for making this case a priority and setting
19 it for hearing on an expedited basis. We're very
20 aware of the heavy case load that this court now
21 carries. And as I said, with me today are my
22 colleagues from the Environment and Natural
23 Resources Division here in Washington, as well
24 from the Eastern District of Oklahoma.

25 Your Honor, given the Zoom format, we have

1 prepared a presentation for you that summarizes
2 the evidence that has been presented and allows
3 us to walk through the arguments. There should
4 also be a binder of the exhibits that you have in
5 case you want to pull out and look at any of
6 those in whole. It's a witness binder that we
7 would use if we were having live testimony. It's
8 just limited to those exhibits that are
9 specifically relevant to the presentation.

10 Also, Your Honor, I'd like to note defendants
11 filed their response to our preliminary
12 injunction as what was at 1:00 a.m. our time, and
13 their TRO response nearly two hours later at
14 approximately 1:54 in the morning in central
15 district time. Therefore, one of the things that
16 we would ask, Your Honor, is to the extent that
17 it is necessary, and we don't think it's
18 necessary--and I fully intend to try to address
19 any open legal issues, or any open issues
20 whatsoever that are necessary to justify and
21 support the entry of a temporary restraining
22 order and preliminary injunction today, Your
23 Honor--if any open questions do remain, Your
24 Honor, we would request an opportunity to file a
25 legal reply brief on Friday to address any open

1 issues that may remain. I know that's atypical
2 of many courts, actually in the Western District
3 of Virginia closer to home, it's actually
4 standard operating procedure. They often have
5 hearings before replies are filed.

6 Regardless, Your Honor, we can take that up
7 perhaps at the end of the hearing if Your Honor
8 deems it to be appropriate.

9 THE COURT: All right. We'll take that
10 up at the end of the hearing.

11 MR. BRIGHTBILL: Thank you, Your Honor.

12 So one of the things that you're going to
13 hear throughout the presentation today is that
14 smoke and mirrors are really a theme of what you
15 will see, because that's all we've gotten this
16 morning from the defendants and that is all that
17 they have repeatedly offered up in an attempted
18 defense of their conduct.

19 Before moving their animals to Tiger King
20 Park, the defendants in this case, Jeff and
21 Lauren Lowe, as well as their entities, claimed
22 to operate the largest private zoo in the
23 country. But from June of 2018 forward to today,
24 they have violated many of the most critical
25 regulations for protecting the health and the

1 safety of the many, many animals including
2 ESA-protected species that are in their
3 possession, custody, and control.

4 Nearly two years ago, more than two years ago
5 now, Dr. JoAnne Green, who was the veterinarian,
6 and is now a witness for the government, for the
7 Greater Wynnewood Exotic Animal Park for nearly
8 21 years resigned after an incident of verbal
9 abuse by the Lowes. Notwithstanding that, the
10 law requires an attending vet to be in place and
11 a plan to ensure the proper care and health and
12 treatment of the animals. Since then, the
13 facilities operated with the Lowes have been
14 violating this critical requirement. And this is
15 a critical requirement not only because of the
16 physical nature of ensuring the health and the
17 safety of these animals and, that is, providing
18 tailored guidance on proper ways to treat sick
19 animals, providing tailored guidance to ensure
20 proper nutrition for their diet. It provides an
21 independent professional under the broader scheme
22 that USDA has established for ensuring the health
23 and safety of animals at all facilities.

24 USDA can't be at every facility all at once,
25 but by requiring the presence of an attending vet

1 and plan, who's periodically checking it,
2 regulated by the government, it provides yet
3 another independent check to ensure proper
4 treatment, health, and handling of the animals.
5 That hasn't been the case now for two and a half
6 years, and the consequence has been very serious.

7 Now, as the court is aware, the United States
8 filed a preliminary injunction, which seeks to
9 remedy and address unsafe harmful conditions at
10 the park, including, specifically by ordering a
11 cessation of all further exhibition without a
12 license and to come into compliance with critical
13 regulations, but we also requested a temporary
14 restraining order, which relates to the
15 defendants' disregard of court orders and callous
16 treatment of certain animals in their care.

17 Now I want to pull up, Your Honor -- my
18 apologizes here for the transition. And just to
19 make sure, can you see the dec, Your Honor?

20 THE COURT: I can, thank you.

21 MR. BRIGHTBILL: Okay. Great.

22 Now as, Your Honor, knows the government
23 initially moved for a temporary restraining order
24 on December 30th regarding defendants' unlawful
25 disposition of a tiger cub. This was in

1 violation of the stipulation and, because it was
2 entered by this court, a court order. Now, the
3 government sought a temporary restraining order
4 at that time, which under Rule 65(b) can be
5 granted on an ex parte basis, but then would only
6 last for 14 days and need a hearing.

7 Now, at this point, the defendants have
8 responded; we're having this hearing. This
9 satisfies the procedures for a preliminary
10 injunction. And so, while the United States
11 initially moved for a temporary restraining
12 order, we're past that point, Your Honor, now.

13 At this point the United States would orally
14 move for a request that if an order is entered by
15 the court, the TRO request should actually be
16 converted to a preliminary injunction request,
17 that the injunction should not expire but should
18 last until trial.

19 The difference between a temporary
20 restraining order and a preliminary injunction,
21 in terms of the standards, are immaterial under
22 the various case law and under the standards,
23 Your Honor.

24 THE COURT: Counsel, let me maybe save
25 you some time. I understand the difference

1 between a TRO and a preliminary injunction, and
2 the Court will hear the requested relief in your
3 TRO as a preliminary injunctive matter based upon
4 the fact that the Court has taken a response as
5 well as having this hearing. It would not be my
6 intent to hear the matter as a TRO and then 14
7 days later have another motion on the preliminary
8 injunction. So I understand the point.

9 MR. BRIGHTBILL: Thank you, Your Honor.
10 We appreciate that.

11 So now the United States is here because of
12 widespread violations of both federal Animal
13 Welfare Act and the Endangered Species Act. The
14 defendants are putting the health and the safety
15 of the animals in serious danger. They are
16 harming and harassing Endangered Species Act
17 protected-species, including lions and tigers,
18 but not just lions and tigers, and to the extent
19 that they are exhibiting with people on the
20 property and permitting people, who are not their
21 employees, access to the property. They're
22 endangering those members of the public with
23 these violations.

24 The violations, as this court is aware from
25 the legal briefing, are many. There is the issue

1 of Daniel the tiger, who was euthanized in
2 violation of the court order. There is the issue
3 of the insufficient food and nutrition, which has
4 been recklessly handled, allowed to either
5 swelter and rot in summer sun, or lie frozen,
6 exposed to pests on the ground, to thaw in the
7 wintertime.

8 You read in the briefs about Nala, the lion,
9 who was found so sick and unable to rise, that an
10 initial inspection in June of 2020 had been to
11 called off. You heard of the monkeys acclimated
12 to cold weather, left out in the freezing during
13 the day, during the time of the inspection.

14 The lack of interior fencing, protecting
15 members of the public or other visitors of the
16 property, the lack of proper exterior fencing to
17 secure the property, both externally and
18 internally, Your Honor. We will walk through
19 each of those issues and the evidence that
20 supports them is before this court in a few
21 moments, Your Honor. But before we do so we want
22 to talk about the defendants in this case.

23 Now, the United States has brought this case
24 against four defendants, Jeffrey Lowe; Lauren
25 Lowe, his wife; the Greater Wynnewood Exotic

1 Animal Park, LLC; and the Tiger King Park, LLC.
2 But the central actor in all of this was
3 Mr. Jeffrey Lowe.

4 Mr. Jeffrey Lowe has variously profited by
5 the exploitation of animals for many years. I
6 say "exploit" not because there's anything
7 improper about the lawful exhibition or use of
8 animals in various forms. Congress has provided
9 for that, and the United States is fully
10 supportive of the policies that Congress has
11 articulated. That's our job to defend those.
12 But I say "exploit" because Mr. Lowe has a long
13 history of operating on the edge of, if not all
14 across of, and in violation of the law and of
15 animals in his care long-suffering.

16 Now, Mr. Lowe makes no secret about his
17 contempt for the law. He has bragged of it.
18 Mr. Lowe sent this email to the government
19 witness Brittany Peet where he rants, quote,
20 "I've learned a lot about distracting, diverting
21 attention and using smoke and mirrors in the last
22 few years. I'm perfectly content to play chess
23 with you guys until the day I die." He goes on,
24 "if we lose in lawsuit, we simply change the name
25 and open another animal business some place else.

1 We all have multiple USDA licenses available."

2 Your Honor, this is not just braggadocio.

3 These were no mere negotiating tactics. This is
4 Jeffrey Lowe's modus operandi. This is what he
5 does and has long done.

6 In 2015, he opened a tiger display, a petting
7 pen, in the back of a flea market in South
8 Carolina. USDA cited him for various violations
9 of the Animal Welfare Act while he was there and
10 he got into a legal dispute with the local
11 community. Ultimately, a local ordinance was
12 passed limiting him to a small number of animals
13 on the property. Thereafter, he then absconded
14 to Oklahoma where he joined up with Joe
15 Maldonado, and the Joe Exotic from the *Tiger King*
16 series, Your Honor, and the Greater Wynnewood
17 Exotic Animal Park.

18 Now, in 2017, prior to the legal troubles of
19 Joe Exotic, Mr. Lowe himself then opened a Tiger
20 Cub petting operation in a local mall. Local law
21 enforcement and officials began to take interest
22 and notice, become concerned. Before anyone
23 could come in and shut him down, Lowe moved off
24 and bragged of going to Las Vegas where he could
25 make far more money. Then in Las Vegas, Mr. Lowe

1 operated an unlawful tiger cub petting bus
2 operation where he would cruise around with tiger
3 cubs in the back, shuttling people from casino to
4 casino. Ultimately, he was arrested. The
5 animals were found to have diarrhea,
6 malnutrition, and other illnesses, and he
7 ultimately pled guilty to the unlicensed
8 exhibition of animals before coming back to
9 Oklahoma.

10 More recently, riding the newfound fame of
11 the *Tiger King* show, he's been back at the
12 Greater Wynnewood Exotic Animal Park, or was,
13 trying to profit. Meanwhile, with the 21-year
14 veterinarian chased from the operation; Mr. Joe
15 Exotic, as he called, arrested and imprisoned;
16 the operations deteriorated over the next two
17 years.

18 USDA inspections in June and July found gross
19 and distributing instances of violations of the
20 Animal Welfare Act and many animals in peril as
21 set forth in the various exhibits and submissions
22 of the United States. The USDA then moved to
23 revoke Mr. Lowe's license before he engaged in
24 his acts of smoke and mirrors again by
25 unilaterally surrendering his license and moving

1 off to Thackerville, where his new Tiger King
2 Park was under construction. Now, here we are in
3 2021.

4 Now, during the status conference on Friday,
5 Mr. Lowe's counsel represented that he's not
6 making any money. The record is to the contrary
7 based on the various admissions and statements of
8 Mr. Lowe. He claims to be making millions upon
9 millions of dollars. One must ask, premised on
10 what? Premised on exhibiting animals at the new
11 zoo. He's selling T-shirts premised on there
12 being a zoo that people will be able to open. He
13 has a made repeated statements of opening and
14 resuming operations at a new zoo. He's
15 soliciting promotions from the public, Help Build
16 the New Tiger King Park, premised at exhibiting
17 at a zoo.

18 Your Honor, under the Animal Welfare Act,
19 exhibitors need to be licensed. In order to be
20 licensed, they must demonstrate that they meet
21 the qualifications of the law. Now, the
22 definition of "exhibitor" under the Animal
23 Welfare Act is quite broad. It includes the term
24 "effects commerce," which is a phrase that
25 Congress famously uses when it is attempting to

1 stretch and/or broaden the reach of its
2 regulatory authority to, or at the limits of, the
3 commerce power. Textually, there is also nothing
4 in this statute that limits exhibiting by an
5 exhibitor to in-person exhibition. If you
6 possess an animal, if you display them to the
7 public in person or if you display them remotely
8 somehow for compensation, you are covered as an
9 exhibitor. Moreover, all zoos are covered for
10 profit or not. Now the Lowes, they deny they
11 have a zoo. They are calling it a park. Your
12 Honor, they can call it whatever they want but
13 the evidence demonstrates that what they have
14 meets the definition and the understanding of a
15 zoo. They say the public is not present, and
16 hasn't been allowed on the facility. The record
17 refutes that, but we'll deal with that in a
18 moment, Your Honor.

19 Under the statute, it doesn't matter if
20 they've paused their operations, if they've
21 surrendered their license, if they're engaged in
22 a scheme of smoke and mirrors to evade USDA and
23 federal regulation. They have a zoo full of
24 animals and they had it before, they have it now,
25 Your Honor. Many zoos right now are not open to

1 the public because of COVID-19. The National Zoo
2 here in Washington is closed and has been for a
3 long time. It's still a zoo, Your Honor. It's
4 still filled with animals. It's still a
5 structure that's been physically constructed for
6 that purpose and with the intent to resume that
7 purpose, and it's still subject to USDA
8 regulation.

9 The same here, Your Honor, there hasn't been
10 any evidence and there is no evidence that these
11 defendants are ceasing exhibition for all time,
12 that they are stopping to be a zoo. As a factual
13 matter, they have a zoo. Their operations may be
14 paused, but they still in terms of what -- of
15 actually having a concessions with tickets at a
16 gate, but they still meet the definition
17 regardless.

18 Now, moreover, they don't even deny, though,
19 that they've been allowing Netflix film crews on
20 to the property, and that's enough under
21 long-standing Animal Welfare Act law.

22 Basic premise of administrative law is
23 under -- going all the way back to the Supreme
24 Court's January 2 decision in 1947, is that
25 agencies can make law and interpret statutes

1 under their authority by either regulation or
2 adjudication.

3 USDA has long broadly interpreted exhibitor
4 to include the television and visual display of
5 animals by those who possess or control those.

6 The *In re Lloyd A. Good* decision from the
7 Department of Agriculture back in 1990 expressed
8 this, and this has now been carried forward and
9 recognized in federal law. The Tenth Circuit has
10 never candidly reached this issue, Your Honor,
11 but the Eleventh Circuit has in the *907 Whitehead*
12 *Street, Incorporated* decision of 2012. They --
13 the museum argued that it is not an exhibitor of
14 animals as defined in the Animal Welfare Act,
15 because they were merely displaying images over
16 the Internet. The Secretary reasoned, however,
17 earlier in the 1990 *Good* decision that the word
18 "distribution" relates only to the manner in
19 which the animals are displayed to the public,
20 and thus an exhibitor becomes subject to the AWA
21 if he distributes animals by television
22 or--so it's disjunctive, Your Honor--simply by
23 making them available to the public. The
24 Secretary's reasonable and consistent
25 interpretation of exhibitor as articulated in

1 Good is entitled to Chevron deference, and
2 ultimately the Eleventh Circuit went on to affirm
3 that the museum at issue there, Your Honor, was
4 subject to the Animal Welfare Act.

5 Now, there is, of course, widespread evidence
6 of Internet exhibition. They've been charging
7 the public for videos on sites like Cameo, just
8 like -- Just Fans. As you can see, Your Honor,
9 for \$125, you can go online and request as,
10 quote, "As seen on Netflix, Tiger King, Jeff and
11 Lauren Lowe. All the money goes back towards the
12 animals' care. We want to make sure they live
13 long, healthy lives," Your Honor. You can buy a
14 custom message that they'll film on Internet. A
15 number of those are included in the record, Your
16 Honor.

17 But exhibition is not just limited to over
18 the Internet. They always acknowledge that
19 television exhibition is being engaged in. "We
20 just started filming." You can see in the
21 transcript of this video by Lauren Lowe in
22 Exhibit E, Your Honor.

23 And the record reflects that that's entirely
24 true. The videos that have been found on the
25 Internet reflect current exhibition, using

1 television film crews who have come on to the
2 property as well as planned exhibition. It
3 includes their claim of -- to open a bed and
4 breakfast. Here's Lauren Lowe with film crews
5 observable in the video explaining their plans
6 for exhibition.

7 (Video played.)

8 So can you see, along with the woman and the
9 camera person in the frame, Your Honor, whom --
10 according to the notes on the Internet by the
11 person who posted it, represents the filming of
12 *Tiger King Season 2*, "my six-year old holding my
13 camera." And you can see from the low-angle shot
14 that that seems to be entirely accurate.

15 (Video played.)

16 There is a member of the public. They say
17 it's a friend, Your Honor. It's not an employee.
18 It's with -- it's someone with a broader group of
19 camera individuals, simply reaching through the
20 bars related to the enclosure and touching an
21 animal, Your Honor.

22 (Video played.)

23 Now, it's not just Netflix exhibition. It's
24 just other people from outside of the operational
25 staff at the facility, Your Honor. There is also

1 evidence that reporters have been allowed onto
2 the property. The Daily Mail reported Lowe
3 granted DailyMail.com exclusive access to its
4 55-acre Tiger King Park in Thackerville,
5 Oklahoma, to show the world that the USDA is
6 wrong.

7 Now to be clear, Your Honor, this issue,
8 though, of an exhibitor is only relevant to the
9 Animal Welfare Act claim. It's important that
10 there are two claims that are made. One of them
11 is the Animal Welfare Act, both of which justify
12 preliminary injunctions here, the other is under
13 the Endangered Species Act. Now, where the Lowes
14 are acting as exhibitors, then the Animal Welfare
15 Act applies. Its standards apply for all the
16 animals, but under the Endangered Species Act, it
17 doesn't matter if the Lowes are exhibitors or
18 not. If they possess ESA covered species, they
19 are covered by the Act and liable if they harm or
20 harass and tape animals that they possess. And
21 the evidence, including inventories from the
22 defendants, reflect numerous tigers, lions,
23 first-generation hybrids, all of which are
24 covered.

25 Now, defendants are trying to argue hybrids

1 aren't covered. Your Honor, that's been rejected
2 by prior courts, including the *PETA v Stark*
3 decision in the Southern District of Indiana,
4 which I believe has been cited in our brief.
5 It's also contrary to the plain text of the
6 statute, which talk about not only the species,
7 but then their offspring. There's also a
8 grandfathering provision which, Your Honor, again
9 we can set forth in our reply brief, whereby
10 endangered species that were already within the
11 possession of individuals at the time of the
12 passage of the Endangered Species Act, would be
13 grandfathered and therefore not subject to the
14 Endangered Species Act, Your Honor. With the
15 structure of those provisions obviously
16 implicating that the -- that going forward the
17 species would be per se covered; otherwise, there
18 would be no need for a grandfathering.

19 Now, with the preliminary elements for the
20 ESA and AWA established, the evidence reflects
21 that the Lowes are exhibitors and the evidence
22 reflects by party admissions of the Lowes that
23 they have ESA-covered species on the property,
24 notwithstanding their attempt to say these are
25 hybrids. That's all by the way a recent

1 invention, Your Honor.

2 If you go back to the actual inventories that
3 were provided prior to these legal proceedings
4 you can see tiger, tiger, tiger, tiger, and it
5 goes on and on and on. It's only after the
6 United States brought their claims that, in
7 December we started seeing inventories that
8 started to call things "hybrid tiger" or "hybrid
9 lions." Your Honor, all of that is self-serving
10 smoke and mirrors and insufficient to rebut the
11 clear conduct and history of evidence here
12 reflecting that these are fully ESA-protected
13 species that are in their possession.

14 So, with the preliminary elements covered,
15 let's start going through the abundant evidence
16 that these animals continue to be in, or are now
17 in, serious danger, are being harmed and are
18 being harassed by being within the possession,
19 and custody, and control of the Lowes and their
20 current operations, Your Honor.

21 First, we'd like to start with the violation
22 of this Court's order. Now, as this court is
23 aware, defendants largely stipulated to the
24 United States first preliminary injunction
25 relief. Not everything, but many. But the

1 primary objective of that first preliminary
2 injunction was for the United States and the USDA
3 and its inspectors to get access to this new
4 facility that the United States had been shut out
5 of, and to determine what was going on there and
6 had things materially changed. When the Lowes
7 agreed to that, a stipulation was filed on
8 December 14th and it was entered on December
9 15th. It included numerous provisions, Your
10 Honor, but in response to the brief that we saw
11 from last night, Your Honor, midnight your time,
12 Your Honor, was that the stipulation was,
13 expressly in paragraph seven, subject to a
14 non-waiver of any and all rights because the
15 United States and USDA knew full well that once
16 we got access to the facility, we may very well
17 find additional violations and issues, as we did.

18 Now, within this stipulation, as this Court
19 is aware, defendants agree that, quote,
20 "defendants will not acquire or dispose of any
21 animal absent leave of court sought by duly
22 noticed motion," and there was an agreement to
23 provide the United States notice before that
24 would happen. Now, there is no dispute that
25 disposal includes and applies to euthanization,

1 and there is a good reason. Acquisition or
2 disposition in the context of the Animal Welfare
3 Act is a well-known term of art. 9 C.F.R.,
4 Section 2.75(d)(1) includes euthanize among terms
5 that are ultimately summed as "otherwise disposed
6 of," Your Honor. In fact, USDA has repeatedly
7 cited the Lowes, or Mr. Lowe, who is the licensed
8 exhibitor, for violations of 2.75(d)(1) over the
9 years. Here's from the July 8, 2020, report
10 Exhibit P, quote "animals transferred to or
11 acquired from other licensees must have
12 disposition and acquisition records." Goes on to
13 explain the requirement and that all regulated
14 animals, transported, sold, euthanized or
15 otherwise disposed of are included in the scope
16 of that.

17 So there's no dispute here that the
18 stipulation applied to what occurred, Your Honor.
19 In fact, you heard no dispute of that during the
20 status conference on Friday.

21 And so what happened was, on December 21st or
22 22nd, as it's now based on the stipulation that
23 was filed or declarations that were filed today,
24 Your Honor, a mere week after the stipulation was
25 entered, defendant sent an agent, a partner,

1 whatever you want to call him, an individual Eric
2 Yanno, to a veterinarian who was not previously
3 known to the government. Dr. Ash Durham is now a
4 witness for the government, and she documented
5 real time what she was observing and some of the
6 conversation. And she recorded, quote, "due to
7 poor prognosis, Mr. Yanno elected to euthanize.
8 I also felt it was the most humane decision due
9 to the condition of the cub on presentation.
10 Also, compliance for correction of the
11 nutritional deficiency might have been an issue."
12 The animal was then sent for an independent
13 necropsy--essentially an autopsy for animals,
14 Your Honor--by the Oklahoma Animal Disease
15 Diagnostics Lab. What they found was a stomach
16 that was markedly distended with large amounts of
17 ingesta, which is reflected in Exhibit KK, which
18 was white meat, Your Honor. Not evidence of
19 mother's milk or appropriate supplement. The
20 necropsy went on to explain "gross examination is
21 consistent with the clinically diagnosed
22 metabolic bone disease with secondary
23 hypoparathyroidism." The most common cause of
24 metabolic bone disease in young, growing animals
25 is due to improper dietary ratios, calcium

1 phosphorous, and Vitamin D. This is further
2 supported by the subjectively enlarged
3 parathyroid gland, another indication that this
4 was metabolic and not genetic, Your Honor.

5 Now, Mr. Lowe's excuse for not complying with
6 the court order and not providing notice is "It
7 had to be done."

8 At midnight, Your Honor, we got a declaration
9 from a Dr. Danner who claims that this was all
10 okay because this was genetic metabolic bone
11 disease.

12 Well, first of all, Your Honor, in response
13 to that, that is irrelevant and no defense to the
14 violation that has occurred and the conduct and
15 the contempt that this represents. It was not
16 Mr. Lowe's, Mr. Yanno's or anyone else's decision
17 to make as to euthanize this animal in light of
18 that court order.

19 By stipulation they ceded to the government
20 and to this court the participation in that
21 decision. That's what that meant, without leave
22 of court, Your Honor. So prior to anyone making
23 a decision to euthanize this animal or any other
24 animal, it was incumbent upon them to provide
25 notice of this to the United States. If we did

1 not stipulate, to file duly noticed motion with
2 this court and for there to be an adjudication as
3 to whether or not this was truly necessary.

4 Now, second, you see in their response is
5 they tried to hide behind Dr. Durham and say that
6 she agreed to euthanize as if to wash their hands
7 of the responsibility of all this. Now, of
8 course, Dr. Durham didn't know that the Lowes was
9 involved in this. Mr. Yanno gave the address of
10 the facility, but didn't identify who he was
11 working for. The government was -- she didn't
12 know. Dr. Durham didn't know the government was
13 concerned about the Lowes and their conduct, but
14 she nevertheless independently became concerned
15 based on the conversation that if the animal
16 wasn't euthanized, it could not be properly cared
17 for and would not be given the opportunity to
18 recover. That's what she what meant by
19 "compliance for correction of the nutrition
20 deficiency might have been an issue." She
21 nevertheless told Mr. Yanno that other cubs
22 needed to be evaluated and nutritional changes
23 needed to be implemented immediately.

24 Now, the government's expert witness,
25 Dr. Gage, has reviewed the file. She thinks

1 Daniel could have recovered and certainly there
2 was no evidence that Daniel was about to die.
3 Nevertheless, at midnight, again the defendants
4 filed a declaration of Dr. Danner. Dr. Gage has
5 identified in a supplemental declaration, which
6 by stipulation we are either in the process of
7 filing or have already filed, Your Honor, many
8 holes in Dr. Danner's midnight declaration. For
9 example, Dr. Danner seems to be proceeding under
10 the belief that the tiger cub has been fed by the
11 mother's milk, but the stomach was found to
12 contain white meat. It was photographed just a
13 week before in a cage with other random liter
14 mates, not with its mother, Your Honor. There
15 are other issues that Dr. Gage has identified,
16 including that this notation of a genetic
17 metabolic bone disease is based on very, very
18 thin and very old and largely discredited
19 scientific studies.

20 It was instead, and is Dr. Gage's testimony
21 that in her experience and professional opinion
22 that this young tiger's metabolic bone disease
23 was diagnosed in a timely manner. It is highly
24 likely that the tiger would have recovered with
25 the appropriate care, exercise and diet, Your

1 Honor, and that's what having a veterinarian
2 on-site consistent with USDA regulations would
3 have ensured, Your Honor. Regardless, this is
4 all irrelevant. We'll never know if Daniel the
5 tiger might have recovered. And in some level
6 this is all academic because what this really
7 just simply just demonstrates is Mr. Lowe's
8 contempt for legal process and that this is more
9 of his smoke and mirrors and effort to evade the
10 law.

11 Now, piling on and making this all the worse,
12 it appears that Daniel's death is just the tip of
13 the iceberg. We found out just yesterday, Your
14 Honor, about Bubbles another cub tiger, under the
15 age of one, who died a -- this is from the
16 declaration of Mr. Lowe filed around midnight
17 last night, Your Honor, the day of the
18 inspection. Bubbles, a hybrid tiger cub, died
19 because she had choked on a chicken bone it was
20 fed. Unfortunately, we were unable to save her
21 and buried her, Your Honor. So that's two dead
22 tiger cubs under the age of one within a one-week
23 period of time, Your Honor.

24 Moreover, it seems highly improbable when you
25 look at Bubbles and the age of this tiger as

1 Dr. Gage voiced, that the tiger would have died
2 the day after the inspection from a chicken bone,
3 first and foremost, because of its age and size.
4 But, second of all, Your Honor, just the day
5 before the inspectors were on the property and
6 there wasn't a chicken bone to be found anywhere.
7 That's one of the things that they cited the
8 Lowes for is that they were feeding them frozen
9 white chicken breasts without the bone necessary
10 to provide them calcium, Your Honor.

11 And that's probably not all, Your Honor. The
12 last inventory that the government received from
13 the Lowes prior to the Thackerville facility was
14 dated August 21, 2020, approximately four months
15 past the next inspection. And then what did USDA
16 find on December 15, 2020? Acquisition and
17 disposition records were missing or unavailable
18 at times of inspection, and at least 60 animals
19 could not be accounted for when comparing
20 animals. Where did those animals go, Your Honor?
21 We don't know. We're being made to guess as to
22 their condition. This court is being left to
23 guess as to their condition. But there is
24 certainly abundant evidence based on the Lowes'
25 terrible track record about where -- what is the

1 likely status and condition of those many, many
2 missing animals?

3 So the government is beyond the relief
4 relating to the tiger cubs and their mothers that
5 was sought through what was initially a temporary
6 restraining order. It had previously requested a
7 preliminary injunction to prohibit further
8 exhibition and compliance with the AWA.

9 Now, as we discussed, the predicate elements
10 of the AWA is that they are exhibitors; but the
11 Endangered Species Act is that they are
12 ESA-covered species. And the legal standards
13 shows then thereafter to establish the violation,
14 the legal standards that must be shown are
15 substantially serious or, excuse me, Your Honor,
16 substantially similar.

17 Under the AWA, the government must show that
18 the animals are in serious danger. Under the
19 ESA, the government must show there has been
20 take, meaning that animals are being harmed,
21 animals are being harassed. And there is an
22 abundance of evidence of this serious danger,
23 harm, and that there is harassment and it
24 includes defendants long-standing habit of
25 providing cheap and inadequate food and nutrition

1 and lack of appropriate supplements for exotic
2 animals.

3 Now, the government's witnesses have cited
4 many, many examples of this, of this long course
5 of conduct on behalf of defendants, both stemming
6 from the earlier Greater Wynnewood Exotic Animal
7 Park and now carried on to the Tiger King Park
8 they're in, Your Honor.

9 There's the story of Dizzy, the emaciated
10 bear. There's the story of the geriatric wolf
11 sleeping on the concrete with a massive sore on
12 the side. There is the story of Nala wallowing
13 in mud, unable to stand and with a condition so
14 dire that the initial inspection had to be
15 cancelled. Government witnesses also referred to
16 the rotting chicken in the summer heat. The
17 frozen meat open to winter cold and pests, horse
18 supplements not tailored to the nutritional needs
19 of exotic animals.

20 Now, the Lowes' response to all of this
21 pretty consistently has been genetic conditions.
22 We have hybrids. None of this is our fault.

23 Your Honor, the evidence is to the contrary.
24 For example, there is the continued story of
25 Nala. After Nala was taken from the defendants'

1 care, she was brought to a Colorado sanctuary and
2 was filmed. The present condition of Nala, Your
3 Honor.

4 (Video played.)

5 This is Nala here, Your Honor, dragging her
6 hind legs. Without much reason, she stumbles and
7 has trouble getting up. Now, note that she was
8 unable to stand at all in June of 2020, Your
9 Honor. But after just two months of appropriate
10 care at this sanctuary, Nala looks much better.

11 (Video played.)

12 This is Nala, the small lion playing with the
13 larger one. You can see Nala still has a limp.
14 She's not all the way there yet, Your Honor, but
15 she's doing a lot better.

16 Now, as the government's witness veterinarian
17 Dr. Gage summarized of all the abundant
18 evidence -- be sure I've got the right . . .
19 Sorry about that, Your Honor. Dr. Gage has
20 testified, quote, "These sources demonstrate that
21 the Lowes consistently failed to provide their
22 big cats with a diet containing the necessary
23 nutrients to allow them to grow properly and
24 thrive." She continues, "Because the Lowes are
25 not using appropriate dietary supplements, it is

1 my opinion that they not feeding their big cats a
2 nutritionally balanced diet and thereby placing
3 the animals at risk developing metabolic bone
4 disease and other nutritional disorders." The
5 Lowes have a history of providing a nutritional
6 deficient diet to the big cats at their
7 facilities, Your Honor.

8 Now, the Lowes are also placing their animals
9 in serious danger, harming them, and harassing
10 them through the insufficient housing facilities
11 at the new Tiger King Park. As the court is
12 aware and can freely take judicial notice of, the
13 temperatures frequently drop below freezing at
14 night in Thackerville, Oklahoma, with chances of
15 rain, snow, and sleet, and actually remain below
16 freezing certainly many days in January, Your
17 Honor. Yet the Tiger King Park consists of many
18 small cages insufficiently prepared for winter
19 and adverse weather generally.

20 Macaques, monkeys native to tropical
21 conditions, were found shivering in freezing cold
22 during the December inspection, Your Honor. As
23 the report reads, and cited them, quote, "failure
24 to have correctly acclimated non-human primates
25 housed in outdoor housing conditions, can lead to

1 hypothermia or hyperthermia." In fact, it wasn't
2 just the monkeys, Your Honor. The USDA went on
3 to cite them for inadequate facilities and the
4 witnesses, Ms. Cunningham, her declaration
5 testifies to this more generally, for the animals
6 around the new Tiger King Park. Quote, "Most of
7 the enclosures" -- excuse me. "Most of the
8 enclosures housing the big cats do not provide
9 shelter for inclement weather. Some of the
10 larger enclosures have roof space that would
11 allow the animals to remain dry in case of wind,
12 rain, and snow, but most of the enclosures would
13 not. Even animals that are cold-weather tolerant
14 may be adversely effected," Your Honor.

15 You can see many of these same in various
16 cages and many places around the park. Large
17 tigers in small holding cages, Your Honor, and
18 you even have the issue of the young cubs, some
19 of Daniel's litter mates, other small cubs all
20 presumably to some level deficient in their
21 nutrition, prone to fracture and crowded in small
22 cages. Perfect conditions for an accident.

23 Now, beyond these issues for the animals in
24 supporting the injunction, vis-a-vis the Animal
25 Welfare Act, for the public as a whole, Your

1 Honor, are the missing barriers for public
2 safety.

3 USDA regs require secondary barriers to
4 protect the public and prevent contact with the
5 animals. That is for the safety of both the
6 animals themselves as well as the public. And
7 the Internet reflects, from the various pictures
8 that have been gathered, that people can readily
9 stick their hands in and through the bars of the
10 cages and have done so. It is also a violation
11 of USDA regs to have insufficient exterior
12 fencing. Individuals or wild animals can enter
13 under or through insufficient fences, nor is this
14 secondary fence capable in any way of containing
15 fugitive escapees. The Tiger King Park is in the
16 midst of a rural residential area. One of the
17 photos submitted with the government's briefs
18 shows the Park with neighbors all around them in
19 every direction. In fact, as can be seen in this
20 posed promotional shot, there are essentially no
21 secondary barriers.

22 Now, in the December 14th stipulation the
23 government said it would not cite the Lowes for
24 such a violation but this stipulation, when the
25 Court is able to -- has the time to go and review

1 it, you will see it was premised on the
2 defendants' factual representation that the
3 public is not allowed on the property and will
4 not be on the property. It was also subject to
5 the government's reservation of rights once they
6 were on the property and were able to assess the
7 condition of the property and the events as
8 relative to new information -- other information
9 obtained, and the videos and the pictures on the
10 Internet ultimately reflect that this is simply
11 not true. Members of the public have been
12 allowed onto the property and absent a court
13 order, one must presume and can presume, the
14 evidence reflects that that will continue.

15 Now finally, Your Honor, with respect to the
16 five major issues of serious danger, harm, and
17 harassment. All the violations here are
18 partially attributable to one, a final issue,
19 that we focus on. That is that USDA regulations
20 require an attending veterinarian and plan of
21 treatment. As I indicated at the beginning, this
22 is a critical requirement because it provides an
23 independent professional, who has responsibility
24 to other regulatory authorities, who can provide
25 and do provide an independent check beyond the

1 USDA that exhibitors are exercising due care in
2 the possession and nourishment and feeding and
3 health of their animals.

4 As I indicated, the veterinarian of 21 years
5 resigned her position in June of 2018, quote,
6 "Following an episode following an abusive,
7 verbal attack toward me by Jeff and Lauren Lowe."

8 There have been other veterinarians called on
9 an ad hoc basis. All of them have confirmed that
10 they are not attending veterinarians of the
11 Lowes, and have not been. That includes
12 Dr. Devine, that includes Dr. Gilmore, and that
13 also includes Dr. Danner, who in his midnight
14 declaration similarly stated that he was not the
15 attending veterinarian of the Lowes.

16 In the past year alone, defendants' callous
17 handling have racked up a gruesome list of
18 causalities as, Your Honor, sees partially
19 summarized here. From dead, malnourished and
20 abused animals. These are just some of the
21 stories that have been related, but the evidence,
22 of course, indicates that many of the animals on
23 the property are malnourished, suffering in
24 serious danger, have been harmed, have been
25 harassed.

1 You've heard about Nala; Ayeesa, in the
2 briefs; Promise; Dizzy; Dot; Mama; Young Yi;
3 Petunia; the macaques, the monkeys; the Lizzie;
4 Bubbles; an unnamed hybrid; Daniel. The list
5 goes on, Your Honor.

6 The United States has demonstrated a very
7 strong likelihood of success. The same evidence
8 shows irreparable harm. Young Yi is dead.
9 Daniel is dead. Bubbles is dead. Their brothers
10 and sisters and fellow animals in the possession,
11 custody, and control of the Lowes need not
12 similarly die. It is also in the public interest
13 to grant an injunction to protect endangered
14 species so that endangered species, whether
15 captive or wild, are being preserved. It's
16 important and in the public interest to grant an
17 injunction so that similar bad actors are
18 deterred, and there is no real harm to the
19 defendants as was revealed in the status
20 conference.

21 The Court no doubt recalls its colloquy with
22 counsel: "Would any of the defendants lose any
23 revenue and I believe your answer was, no, they
24 would not?"

25 "MR. CARD: Correct. That is correct. They

1 will not lose any revenue because they're not
2 making any revenue on them anyway.

3 "THE COURT: Second question is if I granted
4 the government's request in terms of the
5 preliminary injunction or the temporary
6 restraining order would your clients suffer any
7 harm; and, if so, what do you contend that would
8 be?"

9 "The harm is that the cats are Mr. Lowe's
10 property and he has raised them and it would just
11 be like taking any other property from a private
12 citizen. I mean, obviously he wants the cats
13 that he cares for in his care. So, I mean,
14 there's no financial harm, but there's certainly,
15 you know, he's got a right to his property."

16 "THE COURT: So your clients' interest would
17 be that the animals would be cared for and
18 preserved and kept healthy? That's your clients'
19 interest; right?"

20 "MR. CARD: Correct. And they are perfectly
21 capable of doing that."

22 So says Mr. Card, Your Honor, the government
23 thinks the evidence is to the contrary.

24 The colloquy shows, when engaging in the
25 balance of equities, there is no material harm to

1 the Lowes; certainly nothing outweighing the
2 very, very strong need to protect the health and
3 the safety of these animals.

4 Your Honor, it is time to look past Jeffrey
5 Lowe's smoke and mirrors. His callous
6 exploitation of animals, using them and
7 discarding the animals, letting them die, as long
8 as he has a new round of cubs to continue to
9 generate income just like the facilities that
10 he's left behind along the way. All of this must
11 end, and that's what our case ultimately will
12 culminate in, Your Honor.

13 For the moment, though, all we are requesting
14 is a preliminary injunction with various forms of
15 relief to protect the animals pending trial, Your
16 Honor. For these reasons, the United States
17 respectfully requests that the Court grant the
18 relief sought by the TRO, converted, obviously,
19 to a preliminary injunction pending trial, and
20 grant its broader preliminary injunctive relief
21 granting -- pending trial as well.

22 Thank you, Your Honor.

23 THE COURT: Thank you, Mr. Brightbill.

24 Mr. Card, you may proceed.

25 MR. CARD: Thank you, Your Honor. Can

1 you hear me okay?

2 THE COURT: Yes.

3 MR. CARD: Okay. Your Honor, it seems
4 abundantly clear from both the government's brief
5 and the presentation today that when the
6 government entered into the December 14, 2020,
7 stipulation it had no intention of sticking to
8 it.

9 When we entered into the agreement on
10 December 14th, the government knew well that the
11 facility in Thackerville is under construction.
12 It is not a complete structure. They knew full
13 well that there were no public barriers because
14 the public doesn't go on the property.

15 When they get in the property the next day,
16 they seem surprised to learn that there are, in
17 fact, no public barriers. The government
18 conceded, in fact, dropped the request in the
19 stipulation that the Lowes have an attending
20 veterinarian. When they get in the next day,
21 they seemed surprised that there is no attending
22 veterinarian.

23 I say this to say, Your Honor, they agreed to
24 something and then used the knowledge that they
25 already had in order to file a new motion.

1 Now, a lot of their motion, Your Honor, is
2 based on the Lowes allegedly exhibiting over the
3 Internet or on TV. And by the time that the
4 stipulation was entered into on December 14th,
5 every one of those videos and every one of those
6 shots and all the filming was already known to
7 the government. None of this is new information.
8 Yet they alleged that the Lowes, quote,
9 "continued to exhibit." There is not a single
10 piece of evidence that they put within their
11 motion that would substantiate that they are
12 continuing exhibit. There has not been a film
13 crew on the property since the stipulation has
14 been entered into. There has not been -- to my
15 knowledge, there's not been any Cameos.
16 Actually, I know there's been no Cameos that
17 exhibit animals since this stipulation.

18 And speaking of that, Your Honor, the
19 government's definition of exhibitor and the
20 government's definition of public is so broad
21 it's scary, frankly. The Lowes have been -- I
22 mean, ever since the -- particularly ever since
23 the airing of *Tiger King* in March of 2020, which
24 was seen by 34 million people, they're all over
25 the Internet and there's no way that they're

1 going to be able to scrub themselves from the
2 Internet.

3 According to the government's definition of
4 exhibiting, they're going to be exhibiting
5 forever because they are, in fact, on the
6 Internet. Moreover, the government is actually
7 claiming they are exhibiting by selling T-shirts.
8 Selling T-shirts on a website, according to the
9 government, is exhibiting regardless of whether
10 it has anything to do with an animal whatsoever.
11 These Cameos, in particular, they are not based
12 on seeing the animals. Although, in some of
13 them, in some of the older ones, an animal can be
14 seen in the background. The customers ask for
15 these Cameos because of the fame or notoriety, or
16 whatever you want to ask, of the Lowes at this
17 point. And when their zoo had to be shut down
18 during COVID, that was a way to make money. The
19 same thing goes for OnlyFans. There has been no
20 OnlyFans video, which has shown an animal, since
21 the stipulation and indeed since this summer.
22 But the Lowes can't scrub that from the Internet,
23 and the government already knew about these
24 videos before they entered into the stipulation.
25 So why they're complaining about it now, I'm

1 unsure.

2 Your Honor, there's some significant legal
3 questions that need to be answered in this case
4 before any preliminary injunction should be
5 entered. Because once it's time for the
6 defendants to file their answer, it's going to
7 come in the form of a motion to dismiss. As
8 we've already said, the Lowes' animals are not
9 subject to the ESA because they're hybrids.
10 There's scientific articles regarding that fact
11 and the history of the legislation would tend to
12 agree with that.

13 These are all legal questions that need to be
14 born out in more thorough briefing and not just
15 relying on an expedited briefing for a
16 preliminary injunction that shouldn't have been
17 filed in the first place, because there was
18 already agreement to it on December 14th.

19 More concerning is their definition of
20 "public" and "exhibition." As I've already said,
21 according to the government, selling T-shirts on
22 a website is apparently exhibition to the
23 government. Keep in mind, Your Honor, the Lowes
24 live on this property with these animals. That's
25 their life; that's how they live. According to

1 the government's definition of exhibition, they
2 can never have a friend over. Ever. Otherwise,
3 that's exhibition against the USDA rules. They
4 can't ever film themselves at their own house and
5 post it, otherwise that's exhibition according to
6 the USDA's or, excuse me, the government's
7 definition of exhibition.

8 Now, obviously this raises significant First
9 Amendment issues which, again, needs to be born
10 out by thorough briefing with the court.

11 By the way, Your Honor, it's not illegal to
12 own these animals. So if the Lowes want to post
13 a selfie with their own animals, they should be
14 allowed to do that. Moreover, according to the
15 government's definition of exhibition, Netflix is
16 an exhibitor. They, for-profit, are showing
17 lions and tigers on the Internet and according to
18 the government's definition that's exhibition.

19 Now, perhaps Netflix has an exhibition
20 license; I sincerely doubt it. PETA, for
21 instance, has pictures of wild animals, lions,
22 tigers on their Facebook page. According to the
23 government's definition, PETA is actually
24 exhibiting wild animals. I sincerely doubt PETA
25 has an exhibition license because that's their

1 point of existing is to rid the world of
2 exhibiting animals.

3 Excuse me, Your Honor.

4 The point is, Your Honor, that the
5 government's definition of the public and
6 exhibition is so broad that it cannot possibly
7 withstand constitutional scrutiny under the First
8 Amendment, and it cuts against the point of the
9 law in the first place.

10 Now, these regulations were written, I
11 believe, in the 1970s if I'm remembering
12 correctly, at a time when Netflix and the
13 Internet and streaming services just didn't
14 exist. I find it hard to believe that Congress
15 intended for pictures of wild animals with their
16 owners to include -- to be included in
17 exhibiting.

18 Again, with public, the definition of public
19 is of or concerning people as a whole. Are the
20 Lowes -- one of the Lowes closest friends, who is
21 their former nanny and who they named their
22 daughter after, is that people as a whole?
23 Surely not. But it is according to the
24 government.

25 There are some things that I would like to

1 directly address, with regard to particularly
2 Dr. Durham, one of which was that it was claimed
3 that on the day that the animal was put down that
4 Dr. Durham didn't know who Mr. Yanno was working
5 for. That's absolute nonsense. She had been to
6 the park two weeks earlier. She knew exactly who
7 she was working for. She met the Lowes. She
8 toured the entire facility. She looked at every
9 animal and said they all looked great. Why she
10 has changed her tune at this point one can only
11 guess. I assume that she had spoken to --
12 actually, I know that she had spoken to
13 Dr. Devine, who had been a previous vet with the
14 Lowes, and poisoned him -- perhaps Dr. Devine had
15 poisoned the well a bit. But regardless, she
16 knew exactly who she was dealing with. She said
17 the animals looked great on that day.

18 Eric Yanno was on a course to get this animal
19 treatment as soon as possible. He cared about
20 the animal and despite the government's rhetoric
21 that, well, they were just looking for a vet to
22 euthanize a cat that day, he was trying to find a
23 vet that would -- that could possibly help this
24 cat and could potentially save its life.
25 Mr. Yanno had forged an excellent relationship

1 with Dr. Danner, who has been in this business
2 for 42 years. He was the president of Oklahoma
3 Veterinary Board Association for two terms,
4 appointed by Governor Henry, and Mr. Yanno came
5 to trust his judgment.

6 So when he got there that day, Mr. Yanno was
7 told by Dr. Durham, this cat isn't saveable.
8 There's nothing we can do for it. But before
9 Mr. Yanno decided to go ahead and put the cat
10 down as Dr. Durham had suggested, he wanted her
11 to call Dr. Danner so he could get a second
12 opinion. So this idea that the defendants are so
13 callous about their cats is, in and of itself,
14 smoke and mirrors. They're trying to save this
15 cat.

16 Now, I realize there's going to be expert
17 disagreements, just like there could be in
18 medical malpractice cases, but the government's
19 experts are not the end-all be-all. They're not
20 the sole arbiter of what proper vet care is and
21 what proper diagnosis is.

22 The fact that is that Dr. Danner was, I say,
23 quote, "put boots on the ground," but it was over
24 the telephone. He read the x-rays in real time.
25 He spoke to Dr. Durham in real time. He looked

1 at the blood work in real time, and based on his
2 knowledge of the situation he also agreed this
3 animal was suffering. It was going to continue
4 to suffer. There was no bringing this animal
5 back, and the best thing to do was to put this
6 animal down, unfortunately. However, he did call
7 the USDA and he told Eric Yanno that I'm going to
8 call the USDA for you. So he called Bob Styles,
9 who was a USDA investigator, and told him what
10 was going on.

11 So I distinctly recall that in the status
12 conference last Friday it was alleged that, well,
13 we had a cat put down in a clandestine manner.
14 Again, this is more rhetoric from the government
15 that bears no truth whatsoever.

16 Eric Yanno tried to do everything that he
17 could to save that cat. Two vets with boots on
18 the ground decided this cat could not be saved
19 and that this cat was suffering. One of the vets
20 called the USDA. Now, granted, that is not how
21 the process should have gone. Mr. Yanno did not
22 know about the stipulation. And I suppose
23 there's -- well, there must have been a
24 miscommunication among us.

25 Had we known, had I known, I would have

1 called the government and said this is what's
2 going on. This cat needs to be put down
3 immediately because it's suffering. That doesn't
4 change the circumstances that this cat was
5 suffering and the suggestion that Eric Yanno was
6 flippant about the idea is just nonsense.

7 And one final thing, Your Honor, the
8 government went into a great deal about Jeff
9 Lowe's past and the allegations that we still, to
10 this day, have not had a chance to refute because
11 we have not been able to answer a complaint as of
12 yet. Discovery should be born out. I should be
13 able to cross-examine these witnesses. I should
14 be able to cross-examine Dr. Gage or, I mean,
15 Peet and among the many, many, many other
16 witnesses that the government has brought forth
17 in affidavits without the benefit of
18 cross-examining them. The previous vet,
19 Dr. Devine.

20 The point is this is all premature. These
21 are simply allegations, which the Lowes
22 categorically deny. At this point, the Court
23 should not be swayed by simple allegations
24 anymore that it can rule on a simple filing of a
25 complaint. The Lowes and the defendants should

1 be able to have their day in court in which they
2 can answer the complaint, file appropriate
3 motions to dismiss the complaint, and why it
4 needs to be dismissed, have the court analyze
5 those very important legal questions before any
6 tigers or the property of Jeff Lowe are taken
7 from him based solely on affidavits that yet have
8 been substantiated.

9 Your Honor, and I apologize for backtracking
10 as well--I was just going over my notes--but
11 according to the government as well, the very
12 prospect that they want to open a zoo, by the
13 mere fact that they are saying we are building
14 cabins, we would like to rent them out as a bed
15 and breakfast. We're building a zoo. Eventually
16 we'll open it. According to the government, that
17 in and of itself is exhibition. That just
18 doesn't make common sense, Your Honor. It
19 doesn't make sense under the statute; it doesn't
20 make sense under the First Amendment, and these
21 things need to be born out in briefs and in
22 discovery.

23 Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Card.

25 Mr. Card, you said that the defendants'

1 position is that they are not subject to the ESA
2 because some of the animals they have are
3 hybrids. Do you have any authority to cite to me
4 for that position?

5 MR. CARD: That -- well, I have
6 scientific. Well, I intend to get an expert on
7 that one, Your Honor. Mr. Lowe has sent
8 scientific articles that I've read. And frankly
9 that was another reason I would like the chance
10 to actually brief this issue to determine whether
11 these hybrids are actually subject to the ESA.

12 THE COURT: Well, I guess those are two
13 different issues. I'm not asking you to
14 demonstrate to me that they are, in fact,
15 hybrids.

16 The question is more of a -- a legal question
17 is: Do you have any authority that would say
18 that hybrids are not subject to the ESA versus,
19 you know, purebred tigers or lions? Is there any
20 legal authority that I should be reading?

21 MR. CARD: Excuse me, I'm sorry, Your
22 Honor. I don't have any legal authority offhand,
23 but that was part of the request. There's no way
24 I could have made that thorough argument and done
25 all the research within the small time that we

1 had to respond to this. It wasn't physically
2 possible.

3 THE COURT: Okay.

4 MR. CARD: But I would like the chance
5 to do so, Your Honor.

6 THE COURT: Okay. Mr. Card, when was
7 last time that a Cameo video was taken showing
8 any of the animals on the defendants' property?

9 MR. CARD: Early September, I believe.
10 I believe we determined it was September 9th.
11 That's our best guess is September 9th.

12 THE COURT: Was that at the new
13 Thackerville location?

14 MR. CARD: No, that was in -- well, I
15 don't want to. I believe it was in Wynnewood,
16 but I don't want to swear under oath to that.
17 But I believe it was in Wynnewood.

18 THE COURT: Have there been any Cameo
19 videos taken showing any of the animals at the
20 new Thackerville location?

21 MR. CARD: Cameo videos, new
22 Thackerville. Let me think real quick. I don't
23 believe there have.

24 THE COURT: When was the last time that
25 a video was taken or sent through OnlyFans

1 showing any of the animals?

2 MR. CARD: It was the same time period.

3 It was August or September.

4 THE COURT: Were there any OnlyFans
5 videos taken or sent showing any of the animals
6 on the Thackerville property?

7 MR. CARD: There have been instances
8 where there have been showing animals on the
9 Thackerville property, but they were in -- I
10 suppose they had to have been in September or
11 early October. It was before the complaint was
12 filed.

13 THE COURT: Okay. When was the last
14 time that a film crew was on the defendants'
15 Thackerville property?

16 MR. CARD: The first week of November.

17 THE COURT: Are there plans for a film
18 crew to return to that location for filming?

19 MR. CARD: No.

20 THE COURT: Is it because the filming is
21 completed?

22 MR. CARD: I'm not sure, but I also --
23 I'm not really sure on the status of how
24 quickly -- if their filming is completed yet.
25 But I know there are no plans for Netflix to come

1 back to the facility.

2 THE COURT: Is it defendants' position
3 that they are not subject to the Animal Welfare
4 Act because they have relinquished Mr. Lowe's
5 USDA license?

6 MR. CARD: Not at all. Their objection
7 is that they're not subject to the USDA because
8 they're not exhibitors. Again, it's not illegal
9 to own these animals. And if they're not
10 exhibitors, the USDA -- they don't fall under the
11 USDA guidelines.

12 So when the, if I may, Your Honor, when the
13 USDA suspended his license--I believe it was
14 August 21st of 2020--he shut down the zoo, which
15 was in Wynnewood at the time, and at that point
16 he quit exhibiting. Of course, since then,
17 within the next month or so, there had been a
18 couple of times such as on Cameo where an animal
19 was featured in the background, but they weren't
20 the sole focus of the video, so . . .

21 THE COURT: Do the defendants intend to
22 exhibit the animals at the Thackerville location
23 called the Tiger King Park in the future?

24 MR. CARD: When they get a license to do
25 so, yes.

1 THE COURT: What is the expectation of
2 their timing of when they would be exhibiting any
3 of these animals?

4 MR. CARD: The expectation would be as
5 soon as they -- as soon as the facility was built
6 to USDA standards and they actually got an
7 exhibitors license. They're not just going to,
8 you know, say, Hey, we're open, come on in.
9 That's just not going to happen.

10 THE COURT: If the defendants recognize
11 that they need a USDA license to exhibit the
12 animals, they were previously exhibiting the
13 animals at the Wynnewood location, and they need
14 a license to exhibit the animals at the
15 Thackerville location, why did Mr. Lowe
16 relinquish his USDA license?

17 MR. CARD: At the time he didn't want to
18 fight with the USDA and go through the
19 bureaucracy, which clearly we're doing that now
20 anyway, but . . .

21 THE COURT: Well, at the time --

22 MR. CARD: Also, Your Honor --

23 THE COURT: Go ahead.

24 MR. CARD: Also, Your Honor, as I
25 recall, they were required to get out of the

1 Wynnewood facility by October 1st anyway. So
2 it's not the -- the Wynnewood facility was not
3 going to be open but for another month. So it
4 didn't make -- and he would have to apply for
5 another exhibit --

6 THE COURT: Mr. Card, we lost your
7 sound.

8 MR. CARD: He would have to apply for a
9 new license for a new facility anyway so instead
10 of fighting for a license that would only last a
11 month, he decided to relinquish it and he would
12 just apply for a new one at Thackerville.

13 THE COURT: When the animals were moved
14 to the Thackerville location, was it the intent
15 at some point in the future to exhibit those
16 animals after a license was obtained?

17 MR. CARD: Yes.

18 THE COURT: Does Mr. Lowe intend to
19 apply for a USDA license to exhibit the animals?

20 MR. CARD: At this point that is the
21 intent, correct.

22 THE COURT: And was that his intent when
23 he moved the animals?

24 MR. CARD: Yes. His intent was to open
25 a park and a zoo when he got the license and when

1 the zoo was actually built. Neither one of those
2 things has happened, so he has not exhibited any
3 animals.

4 THE COURT: Okay. Thank you, Mr. Card.
5 Mr. Brightbill, do you have anything in
6 response?

7 MR. BRIGHTBILL: I do, Your Honor. I
8 just have a couple points on rebuttal.

9 First of all, I just want to be clear about
10 this issue of the stipulation, Your Honor. So
11 the preliminary injunctive relief that was sought
12 in the first motion was to get, primarily to get,
13 access to the facility. Immediately before we
14 were first supposed to appear and they were
15 supposed to file with the court and they were
16 supposed to file something, they agreed to give
17 us that access and we negotiated the terms of
18 that. But as you can see here under Section 7,
19 quote, "By entering into this stipulation and
20 agreement to address the issues presented in the
21 United States' Motion for Preliminary Injunction
22 neither plaintiff nor defendants are conceding or
23 waiving any arguments, positions, rights, and
24 defenses. Both parties reserve the right to seek
25 further or modify this relief as further

1 information develops." So this argument, this
2 pseudo estoppel argument that they -- defendants
3 are attempting to roll out is precluded by the
4 actual agreement of the parties and ultimately
5 this Court's order.

6 Second, the defendants suggest that they
7 haven't had sufficient time and opportunity to
8 make their case in defense, Your Honor. We filed
9 this complaint, our initial complaint, back in
10 November of 2020. As, Your Honor, knows and
11 heard during the status conference on Friday,
12 there hasn't been a motion to dismiss and there's
13 been issues with the waiver of service and other
14 things. Defendants have simply been taking,
15 candidly, their sweet time in responding to that.
16 They could have acted more expeditiously to
17 present these arguments, to file a motion to
18 dismiss if they wanted to. There's nothing in
19 the federal rules that requires them to wait for
20 waiver of service to file -- to actually be
21 served to file a motion to dismiss.

22 Next, as to the issue of the witnesses and
23 the cross-examination it is the law of this
24 circuit, Your Honor, *Heideman v South Salt Lake*
25 *City*, 348 F.3d, 1182 from the 10th Circuit

1 (2003), quote, "The federal rules of evidence do
2 not apply to preliminary injunction hearings,"
3 Your Honor, out quote, and that is because of the
4 expedited nature of them and the fact that this
5 is a bench trial situation. It is not a jury.
6 And the courts and judges are sophisticated
7 enough to weed through the various issues that
8 are presented by putative hearsay and credibility
9 and the like and make their judgments as to what
10 to accept from a factual predicate in order to
11 grant or deny preliminary injunction.

12 Next, Mr. Card argued that the government is
13 saying that they're exhibitors forever. That is
14 not correct, Your Honor. The issue here was that
15 they were long-standing exhibitors. They are
16 making no bones about the fact that they continue
17 to exhibit. This was not a cessation of
18 exhibition. This was simply a pause of their zoo
19 operations to evade government inspectors,
20 government oversight. They continue to market
21 themselves as exhibitors on the public to raise
22 money on that basis.

23 They want to stop being exhibitors, they can
24 stop marketing themselves as exhibitors; they can
25 stop letting the public on the property,

1 including the press and television; they can stop
2 posting content on the Internet; they can stop
3 featuring themselves on television, allowing film
4 crews on the property.

5 The government's definition of exhibitor is
6 not limitless, Your Honor. The statute itself
7 applies to the welfare of the animals, it applies
8 to those in the possession, custody, or control
9 of animals, Your Honor. That's what all the
10 provisions go to. It does not apply to third
11 parties, who do not actually participate in the
12 possession, custody, or control, like Netflix.
13 That is the long-standing position of the USDA
14 throughout many, many adjudications and
15 regulations over the years.

16 There is no First Amendment issue here
17 whatsoever, Your Honor. I mean, *Golan v. Holder*,
18 609 F.3d, 1067, from the 10th Circuit (2010),
19 sets forth the standard. This is a classic
20 regulation of conduct in commerce. The
21 regulations here regulate the possession,
22 custody, and control of the animals. Any impact
23 on speech here is merely incidental to that
24 regulation, Your Honor, and most importantly the
25 impact on the speech is entirely content neutral.

1 There's no regulation that derives what they can
2 say or not say. They're not subject to legal
3 process here on the basis of what they're saying,
4 as it is content-wise. It is the fact that they
5 are seeking to advance a financial interest in
6 commerce that they are fighting.

7 Finally, Your Honor asked about hybrids.
8 Hybrids are a listed ESA species, and here's the
9 cite for you, Your Honor: 16 U.S.C. 1532(16).
10 That's the definition of species under the
11 Endangered Species Act, which includes all
12 subspecies. Subspecies would include, therefore,
13 any offspring of tigers from the mixing of
14 genetics with and subspecies that are created,
15 Your Honor. That's a long-standing, at this
16 point, USDA position and ESA position.

17 Now, one further thing that Mr. Card had said
18 was there aren't anymore videos, there isn't
19 anymore public access, and nobody needs to come
20 on the property anymore, that's not happening.

21 Well, Your Honor, if that's the case, and we
22 candidly believe that the evidence is to the
23 contrary, but if it is the case, Your Honor, we
24 have a likelihood of success on the various forms
25 of exhibition that are at issue here. Now mind

1 you again, irrelevant for the Endangered Species
2 Act. All we need to show, and we have shown, is
3 harm and harass. But as to the Animal Welfare
4 Act, all they've done is confirm candidly, Your
5 Honor, that there would be no equitable harm in
6 the four-factor test in terms of the balance of
7 harm to the defendants from being subjected to
8 this injunction. They claim they're not doing it
9 anyway and they don't want to do it. We don't
10 believe them, we think the evidence is in
11 contrary. But that's an admission that's fatal
12 to the balance of harm's factor in the
13 preliminary injunction.

14 Unless the Court has further questions, Your
15 Honor, I think that will probably be it.

16 THE COURT: Now, Mr. Brightbill, the
17 stipulation that was entered by the parties
18 approved by the court required the production of
19 certain records and inventory.

20 Have those documents now been provided to the
21 plaintiff?

22 MR. BRIGHTBILL: I don't believe all
23 those of records at this time have been provided.
24 My colleague, Ms. Hollingsworth, is also here in
25 the hearing. She wants to chime in on the

1 specifics of that.

2 MS. HOLLINGSWORTH: Hello, Your Honor.
3 Mary Hollingsworth here. Which documents
4 specifically?

5 THE COURT: Well, the stipulation
6 entered by the parties that the court approved
7 required that the production of certain
8 documents. One was, I think, the category of an
9 inventory of animals, including the name, sex,
10 age, of each animal and then there was veterinary
11 records to be provided. Have all of those
12 documents or any documents that were covered by
13 the stipulation been provided?

14 MS. HOLLINGSWORTH: Yes, Your Honor. We
15 did receive on December 16, 2020, an inventory;
16 however, we're finding some factual issues with
17 the inventory, which we need to address with
18 opposing counsel.

19 In terms of acquisition, disposition records,
20 veterinarian records, any of those business
21 records, anything that pertains to a routine
22 inspection, none of those documents have been
23 provided.

24 THE COURT: Okay. Well, you confer with
25 Mr. Card on that. And, Ms. Hollingsworth, I

1 think you're muted.

2 MS. HOLLINGSWORTH: It doesn't show me.
3 Can you hear me now?

4 THE COURT: Yes.

5 MS. HOLLINGSWORTH: Okay. Yes, I will
6 confer with him on the inventory issue. Thus far
7 they have not been willing to provide us with the
8 rest of that documentation.

9 THE COURT: Okay. You confer with
10 Mr. Card on that. If you can't come to a
11 solution, then you can bring it to my attention.

12 Mr. Card, let me give you, first of all, a
13 question and then a final opportunity to respond
14 to Mr. Brightbill's comments.

15 My first question for you is, you suggested
16 that there is a First Amendment issue with
17 respect to the claims. Can you explain to me,
18 Mr. Card, the First Amendment issue that you
19 believe is present in this case?

20 MR. CARD: Your Honor, according to the
21 government, they can't sell T-shirts online.
22 Regardless of whether it has to do with an animal
23 or not. They can't talk about having animals.
24 They can't go online and show a picture of their
25 own -- let's assume for a second, that there was

1 only one animal, one tiger. According to the
2 government, the Lowes cannot take a picture with
3 their one tiger and post it to the Internet,
4 otherwise that's exhibiting.

5 Oddly, it was said that we make no bones
6 about we continue to exhibit. We make all the
7 bones. That's the -- we deny whole heartily that
8 anything that we were doing right now is a
9 exhibiting under the USDA. That is why, and that
10 is solely why, we are not subject to their
11 regulations.

12 According to the government, they can't have
13 friends over or otherwise that's exhibiting.
14 They can't have friends to their house. They
15 can't take videos with their friends at their own
16 house, otherwise that's exhibiting. That's the
17 First Amendment issue. There's freedom of
18 association; there's freedom of speech,
19 there's -- the Supreme Court has recently, you
20 know, there's social media. Supreme Court cases
21 on the First Amendment that have recently come
22 out that I would like to bear out in front of the
23 Court.

24 According to the government, I've been taking
25 my sweet time because I haven't answered before

1 the answering date. That was the argument that I
2 just heard earlier, which I find interesting. So
3 that's the First Amendment argument, Your Honor,
4 and I believe there was talk about other
5 documents that haven't been provided. We
6 provided what was agreed to.

7 And I'm going through the stipulation yet
8 again, just to make sure I'm not missing
9 anything, but we've provided the inventory.

10 When we came to the agreement, we agreed
11 there would be no attending vet and they agreed
12 to that and then got mad when we didn't have one,
13 and that's just how this has gone. This has been
14 a "gotcha" game for the government since the word
15 go. Same with the perimeter fences. Told them,
16 we didn't have them, they said great. They come
17 in and they're surprised that we don't have
18 perimeter fences. The whole thing has been a
19 "gotcha" game, and had I been actually conferred
20 and called --

21 And one thing I would like to bring up, Your
22 Honor, is this issue of we have adamantly refused
23 to show the government that we are taking care of
24 these macaques, these monkeys. I showed the
25 court this email string, which shows the absolute

1 opposite. What they wrote in their brief is
2 absolutely untrue, categorically. They said we
3 believe that these macaques should be put inside
4 if it's 45 degrees or below. I said, great.
5 We're going to do that. They're brought inside
6 anyway at night, but we're going to do that. No
7 questions asked. We did that. They said, Can
8 you show proof? I said, Sure. Sent them videos,
9 sent them two videos. They acknowledged receipt.

10 Four hours later they file a motion saying we
11 refused to cooperate with the government and
12 protect these macaques. And that's just how this
13 lawsuit has gone thus far. This has been a
14 "gotcha" game.

15 We need a chance to actually put our defense
16 forward in the time that we are given under the
17 Federal Rules of Civil Procedure whether the
18 government thinks that's taking our sweet time or
19 not, that's what we're given under the federal
20 rules.

21 So, Your Honor, that's all I have.

22 THE COURT: Okay. Well, both sides will
23 have an opportunity to do whatever discovery they
24 need at the appropriate time. We're not there
25 yet, but we're moving towards that. Once an

1 answer or a motion is filed and we set a schedule
2 for the case, then both sides will have their
3 fair opportunity to do whatever appropriate
4 discovery needs to be done. So we'll be getting
5 there at some point. But right now we're just
6 addressing the issues preliminarily.

7 And, Mr. Brightbill, are you requesting to
8 file a reply brief?

9 MR. BRIGHTBILL: Your Honor, we would be
10 happy to file a reply brief. We do think it
11 would be very appropriate to file a reply brief
12 if the Court thinks it's necessary and helpful.

13 At the same time, we obviously filed a
14 request for a Temporary Restraining Order. We
15 would -- that could have been granted ex parte.
16 We do believe that the circumstances here provide
17 for expedited relief. We don't want to candidly
18 file a reply brief if it's going to slow down the
19 process and slow down the time that is going to
20 be required for us to get a decision.

21 We would, nevertheless, if the Court believes
22 that it would be helpful to have that additional
23 brief, given some of the issues that were raised
24 at midnight last night and discussed during the
25 hearing today. I feel I tried to pivot as

1 quickly as I could and provide the court some
2 cites to respond to all of these issues, which
3 are really unfounded, Your Honor.

4 But if the Court would like a full, legal
5 brief from us on reply to address those issues in
6 writing and believes that's appropriate, we would
7 be pleased to do it, Your Honor.

8 THE COURT: Well, Mr. Brightbill, I'm
9 not asking or requesting the government to do
10 that. And I agree that the Court's not going to
11 wait to issue its decision in this case for a
12 brief. If the government would like to submit a
13 reply brief, you can do so at your option, but it
14 would need to be submitted to the Court by
15 Thursday the 14th at noon, or it would likely not
16 be considered at all.

17 MR. BRIGHTBILL: Thank you, Your Honor.
18 We'll do that. I appreciate the clarification.

19 THE COURT: Mr. Card, do you have
20 anything further for the Court today?

21 MR. CARD: I don't, Your Honor.

22 THE COURT: Okay. Anything further on
23 behalf of the government?

24 MS. HOLLINGSWORTH: Your Honor, if I
25 may. This is Mary Hollingsworth for the United

1 States.

2 Regarding the Motion for Temporary
3 Restraining Order, all of the animals that are
4 addressed in that order are protected under the
5 Endangered Species Act. They are tigers. They
6 listed at the species level. You don't even have
7 to get to the exhibitor issue because under the
8 ESA, they are protected and we have established
9 harm and harassment under Section 9. And
10 opposing counsel has not mentioned they are not
11 under the Endangered Species Act under Section 9.
12 There's a provision and it is possible to get a
13 permit to be exempted from that provision;
14 however, the defendants do not have an exemption.
15 So, therefore, all these activities that we've
16 mentioned in our Temporary Restraining Order
17 Motion are prohibited under the Endangered
18 Species Act. And by the way, there is no such
19 thing as a hybrid tiger. They are all protected.

20 THE COURT: Ms. Hollingsworth, we can't
21 hear you right now.

22 MS. HOLLINGSWORTH: I'm done. I don't
23 know if you heard, but I was talking about the
24 Endangered Species Act. I don't know if you have
25 any questions, but I'm happy to answer them.

1 THE COURT: I do not.

2 Are the parties submitting the exhibits to
3 the court that were listed in their various
4 exhibit list?

5 MR. BRIGHTBILL: Your Honor, I believe
6 they have been all been submitted at this point,
7 yes.

8 THE COURT: Okay. So I have Plaintiff's
9 exhibits. I will receive the exhibits listed on
10 Plaintiff's exhibits list, which are Exhibit A
11 through RR, and I will receive the Defendants'
12 Exhibits, which are 1 through 11.

13 Anything further on behalf of the
14 government?

15 MS. STRIPPOLI: Your Honor, this is
16 Briena Strippoli.

17 This is to let you know that we have filed a
18 motion to include two additional declarations
19 right at the start of the hearing. And the
20 stipulation on hearing that we also filed
21 permitted this, that plaintiffs reserve their
22 right to file rebuttal declarations.

23 THE COURT: Okay. I will receive those
24 additional affidavits. And if you want to file
25 anything in rebuttal, then the government needs

1 to do it in its brief, which will be due January
2 14th at noon.

3 MR. BRIGHTBILL: Let me just clarify,
4 Your Honor. So we actually filed those at the
5 beginning of the hearing.

6 The way we agreed to handle this with
7 Mr. Card was that he would file his exhibits and
8 other documents in response to our TRO after the
9 status conference on Friday, that he would file
10 those, and then we reserved the right in the
11 stipulation to respond to those before the
12 hearing. We expected to get those before
13 midnight, Your Honor, and so we didn't. And so
14 we scrambled this morning to try to get our
15 rebuttal declarations together and filed, and
16 they were filed directly before the hearing.

17 So the Court, I believe, already has those is
18 what Ms. Strippoli was referring to.

19 On top of that Mr. Card, I think in the
20 stipulation, indicated that he was going to
21 further reserve the right to file yet more
22 declarations and I presume that, in that
23 instance, they would be subject to the same
24 deadline that the government is subject to.

25 THE COURT: Yes. So I have -- I guess I

1 don't have them with me because I didn't know
2 those had been filed. So what you're telling me
3 is that there have been two additional exhibits
4 that have been submitted, and I presume those
5 will be Exhibit SS and Exhibit TT?

6 MR. BRIGHTBILL: I believe so, yes, Your
7 Honor.

8 THE COURT: Okay. So that's separate
9 and apart from the brief. I got it.

10 Mr. Card, are you asking to submit additional
11 declarations?

12 MR. CARD: Not at this time, Your Honor.

13 THE COURT: Okay. Is there anything
14 further on behalf of the government?

15 MR. BRIGHTBILL: Not at this time, Your
16 Honor. Thank you very much for your time this
17 morning.

18 THE COURT: Thank you.

19 Mr. Card, anything further on behalf of the
20 defendants?

21 MR. CARD: No, sir. Thank you.

22 THE COURT: Okay. Thank you very much,
23 and I just will remind you all, I know how things
24 can be, litigation can get heated, each side
25 needs to zealously advocate for their clients,

1 the court expects and understand that.

2 Do your best as an officer of the court and
3 counsel to try to set aside personal issues,
4 because that's not going to advance the case. It
5 seems like you have been conferring much better
6 in the last few days, and I would request that
7 you continue to do so in a very professional way
8 that's most helpful to both of your clients and
9 it's the most helpful to the court. Thank you
10 very much. We'll be in recess.

11 (Off the record at 11:54 a.m.)

12 * * * *

13 **C E R T I F I C A T E**

14 I, Shelley Ottwell, Registered Professional
15 Reporter for the Eastern District of Oklahoma, do
16 hereby certify that the foregoing is a true and
17 accurate transcription of my stenographic notes
18 and is a true record of the proceedings held in
19 the above-captioned case.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 4th day of January, 2022.

22
23
24 s/Shelley Ottwell
25 SHELLEY OTTWELL, RPR, CSR
United States Stenographer